

CHILD AND FAMILY PROTECTION

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Curtis S. Bramble

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, or an enterprise that encourages, commands, or causes another to commit child abandonment is:
 - guilty of a felony of the third degree; or
 - if the child abandonment results in serious physical injury to the child, or the person or enterprise receives any benefit as a result of the child abandonment, guilty of a felony of the second degree;
- ▶ provides that a court may order a person or enterprise to pay the costs of investigating and prosecuting a child abandonment case and the costs of securing a forfeiture provided for in this bill;
- ▶ provides that tangible or pecuniary benefits received from child abandonment are subject to criminal or civil forfeiture; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **62A-4a-1002**, as enacted by Laws of Utah 2006, Chapter 77

35 **76-5-109**, as last amended by Laws of Utah 2006, Chapter 75



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

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

39 **62A-4a-1002. Definitions.**

40 As used in this part:

41 (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"
42 means:

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

44 (A) severe or chronic physical abuse;

45 (B) sexual abuse;

46 (C) sexual exploitation;

47 (D) abandonment;

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

49 (F) chronic neglect;

50 (G) severe neglect;

51 (H) chronic emotional abuse; or

52 (I) severe emotional abuse; or

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

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

55 which indicates a significant risk to other children; or

56 (B) sexual behavior with or upon another child which indicates a significant risk to
57 other children.

58 (b) "Severe type of child abuse or neglect" does not include:
59 (i) the use of reasonable and necessary physical restraint or force by an educator in
60 accordance with Subsection 53A-11-802(2) or Section 76-2-401;
61 (ii) a person's conduct that:
62 (A) is justified under Section 76-2-401; or
63 (B) constitutes the use of reasonable and necessary physical restraint or force in
64 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
65 other dangerous object in the possession or under the control of a child or to protect the child
66 or another person from physical injury; or
67 (iii) a health care decision made for a child by the child's parent or guardian, unless,
68 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
69 clear and convincing evidence, that the health care decision is not reasonable and informed.

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

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

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

80 **76-5-109. Child abuse.**

81 (1) As used in this section:

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

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

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

85 (B) intentionally fails to make reasonable arrangements for the safety, care, and physical

86 custody of the child; and

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

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

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

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

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

92 (ii) "Child abandonment" does not include:

93 (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

94 (B) giving legal consent to a court order for termination of parental rights:

95 (I) in a legal adoption proceeding; or

96 (II) in a case where a petition for the termination of parental rights, or the termination
97 of a guardianship, has been filed.

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

100 (d) "Enterprise" is as defined in Section 76-10-1602.

101 ~~[(e)]~~ (e) "Physical injury" means an injury to or condition of a child which impairs the
102 physical condition of the child, including:

103 (i) a bruise or other contusion of the skin;

104 (ii) a minor laceration or abrasion;

105 (iii) failure to thrive or malnutrition; or

106 (iv) any other condition which imperils the child's health or welfare and which is not a
107 serious physical injury as defined in Subsection (1)~~[(d)]~~(f).

108 ~~[(d)]~~ (f) (i) "Serious physical injury" means any physical injury or set of injuries that:

109 (A) seriously impairs the child's health;

110 (B) involves physical torture;

111 (C) causes serious emotional harm to the child; or

112 (D) involves a substantial risk of death to the child.

113 (ii) "Serious physical injury" includes:

- 114 (A) fracture of any bone or bones;
- 115 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
116 shaking, or causing the child's head to impact with an object or surface;
- 117 (C) any burn, including burns inflicted by hot water, or those caused by placing a hot
118 object upon the skin or body of the child;
- 119 (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- 120 (E) any combination of two or more physical injuries inflicted by the same person,
121 either at the same time or on different occasions;
- 122 (F) any damage to internal organs of the body;
- 123 (G) any conduct toward a child that results in severe emotional harm, severe
124 developmental delay or retardation, or severe impairment of the child's ability to function;
- 125 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
126 of the function of a bodily member, limb, or organ;
- 127 (I) any conduct that causes a child to cease breathing, even if resuscitation is successful
128 following the conduct; or
- 129 (J) any conduct that results in starvation or failure to thrive or malnutrition that
130 jeopardizes the child's life.
- 131 (2) Any person who inflicts upon a child serious physical injury or, having the care or
132 custody of such child, causes or permits another to inflict serious physical injury upon a child is
133 guilty of an offense as follows:
 - 134 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
 - 135 (b) if done recklessly, the offense is a felony of the third degree; or
 - 136 (c) if done with criminal negligence, the offense is a class A misdemeanor.
- 137 (3) Any person who inflicts upon a child physical injury or, having the care or custody
138 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
139 offense as follows:
 - 140 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
 - 141 (b) if done recklessly, the offense is a class B misdemeanor; or

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

143 (4) A person who commits child abandonment, or encourages or causes another to
144 commit child abandonment, or an enterprise that encourages, commands, or causes another to
145 commit child abandonment, is:

146 (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

147 (b) guilty of a felony of the second degree, if, as a result of the child abandonment:

148 (i) the child suffers a serious physical injury; or

149 (ii) the person or enterprise receives, directly or indirectly, any benefit.

150 (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the
151 person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and
152 prosecuting the offense and the costs of securing any forfeiture provided for under Subsection
153 (5)(b).

154 (b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to
155 criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeitures Procedures
156 Act.

157 [~~4~~] (6) A parent or legal guardian who provides a child with treatment by spiritual
158 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
159 practices of an established church or religious denomination of which the parent or legal
160 guardian is a member or adherent shall not, for that reason alone, be considered to have
161 committed an offense under this section.

162 [~~5~~] (7) A parent or guardian of a child does not violate this section by selecting a
163 treatment option for the medical condition of the child, if the treatment option is one that a
164 reasonable parent or guardian would believe to be in the best interest of the child.

165 [~~6~~] (8) A person is not guilty of an offense under this section for conduct that
166 constitutes:

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

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

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

- 170 (i) in self-defense;
- 171 (ii) in defense of others;
- 172 (iii) to protect the child; or
- 173 (iv) to remove a weapon in the possession of a child for any of the reasons described in
- 174 Subsections [~~(6)~~] (8)(c)(i) through (iii).