

1 **ABUSE, NEGLECT, AND DIVISION DEFINITIONS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Christine F. Watkins**

5 Senate Sponsor: David P. Hinkins

7 **LONG TITLE**

8 **General Description:**

9 This bill eliminates a responsibility of the Division of Child and Family Services.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ eliminates the division's responsibility to conduct court-ordered home evaluations in
13 custody proceedings.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 **AMENDS:**

20 **62A-4a-105**, as last amended by Laws of Utah 2011, Chapter 186

21 **78A-6-105**, as last amended by Laws of Utah 2011, Chapter 320

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

24 Section 1. Section **62A-4a-105** is amended to read:

25 **62A-4a-105. Division responsibilities.**

26 The division shall:

27 (1) administer services to minors and families, including child welfare services,
28 domestic violence services, and all other responsibilities that the Legislature or the executive
29 director may assign to the division;

30 (2) establish standards for all contract providers of out-of-home care for minors and
31 families;

32 (3) cooperate with the federal government in the administration of child welfare and
33 domestic violence programs and other human service activities assigned by the department;

34 (4) provide for the compilation of relevant information, statistics, and reports on child
35 and family service matters in the state;

36 (5) prepare and submit to the department, the governor, and the Legislature reports of
37 the operation and administration of the division in accordance with the requirements of
38 Sections 62A-4a-117 and 62A-4a-118;

39 (6) promote and enforce state and federal laws enacted for the protection of abused,
40 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in
41 accordance with the requirements of this chapter, unless administration is expressly vested in
42 another division or department of the state. In carrying out the provisions of this Subsection
43 (6), the division shall cooperate with the juvenile courts, the Division of Juvenile Justice
44 Services, and with all public and private licensed child welfare agencies and institutions to
45 develop and administer a broad range of services and supports. The division shall take the
46 initiative in all matters involving the protection of abused or neglected children if adequate
47 provisions have not been made or are not likely to be made, and shall make expenditures
48 necessary for the care and protection of those children, within the division's budget. Except to
49 the extent provided by rule made by the division on or after May 10, 2011, the division is not
50 responsible for investigating domestic violence in the presence of a child as described in
51 Section 76-5-109.1;

52 (7) provide substitute care for dependent, abused, neglected, and delinquent children,
53 establish standards for substitute care facilities, and approve those facilities;

54 (8) provide adoption assistance to persons adopting children with special needs under
55 Part 9, Adoption Assistance, of this chapter. The financial support provided under this
56 Subsection (8) may not exceed the amounts the division would provide for the child as a legal
57 ward of the state;

58 (9) cooperate with the Employment Development Division in the Department of
59 Workforce Services in meeting social and economic needs of individuals eligible for public
60 assistance;

61 ~~[(10) conduct court-ordered home evaluations for the district and juvenile courts with~~
62 ~~regard to child custody issues. The court shall order either or both parties to reimburse the~~
63 ~~division for the cost of that evaluation, in accordance with the community rate for that service~~
64 ~~or with the department's fee schedule rate;]~~

65 [(11)] (10) provide noncustodial and in-home preventive services, designed to prevent
66 family breakup, family preservation services, and reunification services to families whose
67 children are in substitute care in accordance with the requirements of this chapter and Title
68 78A, Chapter 6, Juvenile Court Act of 1996;

69 [(12)] (11) provide protective supervision of a family, upon court order, in an effort to
70 eliminate abuse or neglect of a child in that family;

71 [(13)] (12) establish programs and provide services to minors who have been placed in
72 the custody of the division for reasons other than abuse or neglect, pursuant to Section
73 62A-4a-250;

74 [(14)] (13) provide shelter care in accordance with the requirements of this chapter and
75 Title 78A, Chapter 6, Juvenile Court Act of 1996;

76 [(15)] (14) provide social studies and reports for the juvenile court in accordance with
77 Section 78A-6-605;

78 [(16)] (15) arrange for and provide training for staff and providers involved in the
79 administration and delivery of services offered by the division in accordance with this chapter;

80 [(17)] (16) provide domestic violence services in accordance with the requirements of
81 federal law, and establish standards for all direct or contract providers of domestic violence
82 services. Within appropriations from the Legislature, the division shall provide or contract for
83 a variety of domestic violence services and treatment methods;

84 [(18)] (17) ensure regular, periodic publication, including electronic publication,
85 regarding the number of children in the custody of the division who have a permanency goal of

86 adoption, or for whom a final plan of termination of parental rights has been approved,
87 pursuant to Section 78A-6-314, and promote adoption of those children;

88 ~~[(19)]~~ (18) provide protective services to victims of domestic violence, as defined in
89 Section 77-36-1, and their children, in accordance with the provisions of this chapter and of
90 Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

91 ~~[(20)]~~ (19) refer an individual receiving services from the division to the local
92 substance abuse authority or other private or public resource for court-ordered drug screening
93 test. The court shall order the individual to pay all costs of the tests unless:

94 (a) the cost of the drug screening is specifically funded or provided for by other federal
95 or state programs;

96 (b) the individual is a participant in a drug court; or

97 (c) the court finds that the individual is impecunious;

98 ~~[(21)]~~ (20) have authority to contract with a private, nonprofit organization to recruit
99 and train foster care families and child welfare volunteers in accordance with Section
100 62A-4a-107.5; and

101 ~~[(22)]~~ (21) perform such other duties and functions as required by law.

102 Section 2. Section **78A-6-105** is amended to read:

103 **78A-6-105. Definitions.**

104 As used in this chapter:

105 (1) (a) "Abuse" means:

106 (i) nonaccidental harm of a child;

107 (ii) threatened harm of a child;

108 (iii) sexual exploitation; or

109 (iv) sexual abuse.

110 (b) "Abuse" does not include:

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

112 (ii) conduct described in Section 76-2-401; or

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

- 114 (A) in self-defense;
- 115 (B) in defense of others;
- 116 (C) to protect the child; or
- 117 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 118 Subsections (1)(b)(iii)(A) through (C).
- 119 (2) "Abused child" means a child who has been subjected to abuse.
- 120 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 121 alleged in the petition have been proved.
- 122 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
- 123 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
- 124 be referred to as a minor.
- 125 (5) "Board" means the Board of Juvenile Court Judges.
- 126 (6) "Child" means a person under 18 years of age.
- 127 (7) "Child placement agency" means:
- 128 (a) a private agency licensed to receive a child for placement or adoption under this
- 129 code; or
- 130 (b) a private agency that receives a child for placement or adoption in another state,
- 131 which agency is licensed or approved where such license or approval is required by law.
- 132 (8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 133 (9) "Commit" means, unless specified otherwise:
- 134 (a) with respect to a child, to transfer legal custody; and
- 135 (b) with respect to a minor who is at least 18 years of age, to transfer custody.
- 136 (10) "Court" means the juvenile court.
- 137 (11) "Dependent child" includes a child who is homeless or without proper care
- 138 through no fault of the child's parent, guardian, or custodian.
- 139 (12) "Deprivation of custody" means transfer of legal custody by the court from a
- 140 parent or the parents or a previous legal custodian to another person, agency, or institution.
- 141 (13) "Detention" means home detention and secure detention as defined in Section

142 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
143 restricting facility:

144 (a) pending court disposition or transfer to another jurisdiction; or

145 (b) while under the continuing jurisdiction of the court.

146 (14) "Division" means the Division of Child and Family Services.

147 (15) "Formal referral" means a written report from a peace officer or other person
148 informing the court that a minor is or appears to be within the court's jurisdiction and that a
149 petition may be filed.

150 (16) "Group rehabilitation therapy" means psychological and social counseling of one
151 or more persons in the group, depending upon the recommendation of the therapist.

152 (17) "Guardianship of the person" includes the authority to consent to:

153 (a) marriage;

154 (b) enlistment in the armed forces;

155 (c) major medical, surgical, or psychiatric treatment; or

156 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

157 (18) "Habitual truant" is as defined in Section 53A-11-101.

158 (19) "Harm" means:

159 (a) physical, emotional, or developmental injury or damage;

160 (b) sexual abuse; or

161 (c) sexual exploitation.

162 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
163 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
164 nephew, niece, or first cousin.

165 (b) The relationships described in Subsection (20)(a) include:

166 (i) blood relationships of the whole or half blood, without regard to legitimacy;

167 (ii) relationships of parent and child by adoption; and

168 (iii) relationships of stepparent and stepchild while the marriage creating the
169 relationship of a stepparent and stepchild exists.

170 (21) "Legal custody" means a relationship embodying the following rights and duties:

171 (a) the right to physical custody of the minor;

172 (b) the right and duty to protect, train, and discipline the minor;

173 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
174 medical care;

175 (d) the right to determine where and with whom the minor shall live; and

176 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

177 (22) "Minor" means:

178 (a) a child; or

179 (b) a person who is:

180 (i) at least 18 years of age and younger than 21 years of age; and

181 (ii) under the jurisdiction of the juvenile court.

182 (23) "Molestation" means that a person, with the intent to arouse or gratify the sexual
183 desire of any person:

184 (a) touches the anus or any part of the genitals of a child;

185 (b) takes indecent liberties with a child; or

186 (c) causes a child to take indecent liberties with the perpetrator or another.

187 (24) "Natural parent" means a minor's biological or adoptive parent, and includes the
188 minor's noncustodial parent.

189 (25) (a) "Neglect" means action or inaction causing:

190 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
191 Relinquishment of a Newborn Child;

192 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
193 guardian, or custodian;

194 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
195 subsistence, education, or medical care, or any other care necessary for the child's health,
196 safety, morals, or well-being; or

197 (iv) a child to be at risk of being neglected or abused because another child in the same

198 home is neglected or abused.

199 (b) The aspect of neglect relating to education, described in Subsection (25)(a)(iii),
200 means that, after receiving a notice of compulsory education violation under Section
201 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
202 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent
203 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
204 education.

205 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
206 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

207 (d) (i) Notwithstanding Subsection (25)(a), a health care decision made for a child by
208 the child's parent or guardian does not constitute neglect unless the state or other party to the
209 proceeding shows, by clear and convincing evidence, that the health care decision is not
210 reasonable and informed.

211 (ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising
212 the right to obtain a second health care opinion.

213 (26) "Neglected child" means a child who has been subjected to neglect.

214 (27) "Nonjudicial adjustment" means closure of the case by the assigned probation
215 officer without judicial determination upon the consent in writing of:

216 (a) the assigned probation officer; and

217 (b) (i) the minor; or

218 (ii) the minor and the minor's parent, legal guardian, or custodian.

219 (28) "Physical abuse" means abuse that results in physical injury or damage to a child.

220 (29) "Probation" means a legal status created by court order following an adjudication
221 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is
222 permitted to remain in the minor's home under prescribed conditions and under supervision by
223 the probation department or other agency designated by the court, subject to return to the court
224 for violation of any of the conditions prescribed.

225 (30) "Protective supervision" means a legal status created by court order following an

226 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
227 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
228 dependency is provided by the probation department or other agency designated by the court.

229 (31) (a) "Residual parental rights and duties" means those rights and duties remaining
230 with the parent after legal custody or guardianship, or both, have been vested in another person
231 or agency, including:

- 232 (i) the responsibility for support;
- 233 (ii) the right to consent to adoption;
- 234 (iii) the right to determine the child's religious affiliation; and
- 235 (iv) the right to reasonable parent-time unless restricted by the court.

236 (b) If no guardian has been appointed, "residual parental rights and duties" also include
237 the right to consent to:

- 238 (i) marriage;
- 239 (ii) enlistment; and
- 240 (iii) major medical, surgical, or psychiatric treatment.

241 (32) "Secure facility" means any facility operated by or under contract with the
242 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
243 youth offenders committed to the division for custody and rehabilitation.

244 (33) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
245 child.

246 (34) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
247 child.

248 (35) "Sexual abuse" means:

249 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
250 directed towards a child; or

251 (b) engaging in any conduct with a child that would constitute an offense under any of
252 the following, regardless of whether the person who engages in the conduct is actually charged
253 with, or convicted of, the offense:

- 254 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 255 (ii) child bigamy, Section 76-7-101.5;
- 256 (iii) incest, Section 76-7-102;
- 257 (iv) lewdness or sexual battery, Section 76-9-702;
- 258 (v) lewdness involving a child, Section 76-9-702.5; or
- 259 (vi) voyeurism, Section 76-9-702.7.
- 260 (36) "Sexual exploitation" means knowingly:
 - 261 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
 - 262 (i) pose in the nude for the purpose of sexual arousal of any person; or
 - 263 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
 - 264 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
 - 265 (b) displaying, distributing, possessing for the purpose of distribution, or selling
 - 266 material depicting a child:
 - 267 (i) in the nude, for the purpose of sexual arousal of any person; or
 - 268 (ii) engaging in sexual or simulated sexual conduct; or
 - 269 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
 - 270 Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is
 - 271 actually charged with, or convicted of, the offense.
 - 272 (37) "Shelter" means the temporary care of a child in a physically unrestricted facility
 - 273 pending court disposition or transfer to another jurisdiction.
 - 274 (38) "State supervision" means a disposition that provides a more intensive level of
 - 275 intervention than standard probation but is less intensive or restrictive than a community
 - 276 placement with the Division of Juvenile Justice Services.
 - 277 (39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
 - 278 substances.
 - 279 (40) "Substantiated" is as defined in Section 62A-4a-101.
 - 280 (41) "Supported" is as defined in Section 62A-4a-101.
 - 281 (42) "Termination of parental rights" means the permanent elimination of all parental

282 rights and duties, including residual parental rights and duties, by court order.

283 (43) "Therapist" means:

284 (a) a person employed by a state division or agency for the purpose of conducting
285 psychological treatment and counseling of a minor in its custody; or

286 (b) any other person licensed or approved by the state for the purpose of conducting
287 psychological treatment and counseling.

288 (44) "Unsubstantiated" is as defined in Section 62A-4a-101.

289 (45) "Without merit" is as defined in Section 62A-4a-101.